IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 15.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2537 of 2001
& WAMP No.19295 of 2001

D.Chitra ... Appellant

Vs.

1.The Collector,
Salem District,
Salem.

2.The Station Director,
All India Radio,
Government of India,
Chennai-600 004. .. Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 29.10.2001 made in W.P.No.10858 of 1993. Petition to file under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the 1st Respondent in his proceedings in Letter NO. D. Dis NO. 16726/90 D-10 dated 13.09.1990 as disclosed in Memo NO. MAD 3(2)/93-S dated 15/5/93 to the 2nd Respondent and quash the order passed therein

For Appellant : Mrs.V.J.Latha for
Mr.R.Manikandan

For 1st respondent : Mr.P.Subramanian,
Government Advocate

For 2nd respondent : Mr.P.Wilson,
Asst. Solicitor General

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above appeal is directed against the order dated 29.10.2001 made in W.P.No.10858 of 1993, in and by which, the learned Single Judge, after finding that there is no merit, has dismissed the writ petition with a cost of Rs.5,000/-.

2. Heard the learned counsel for the appellant as well as the respondents.

3. According to the petitioner/appellant, she belongs to 'Konda Kappua' community, which is one of the communities listed as Scheduled Tribe under the Constitution (Scheduled Tribe) Order, 1950 passed by the President by virtue of the powers conferred upon him under Article 342 of the Constitution and listed as such under Central Act 108/76. When the second respondent-All India Radio, Government of India, Madras, called for applications for the post of Engineering Assistants in the year 1989, the petitioner applied under the quota reserved for Scheduled Tribes. She was selected both in written test as well as in the interview and appointed to the said post with effect from 16.10.1989. At the time of interview, she had produced a community certificate dated 09.07.1983 issued by the Tahsildar (Forests Settlements), Attur Taluk. At the time of her appointment, the second respondent has directed her to produce another community certificate. The petitioner has obtained another community certificate in the year 1989 from the Special Tahsildar (Debt Relief), Salem, in the prescribed form. According to the petitioner, both the certificates were issued by the Officers, who are competent to issue the same. The said certificates were issued by the authorities only after enquiry and after satisfying themselves. While so, the first respondent-Collector, Salem District, has issued notice dated 26.02.1991 calling upon her to appear for an enquiry with regard to the verification of her community status. But, the fact remains that she did not attend the enquiry. The same was intimated to the second respondent. The second respondent, once again, through their memo, called for further particulars relating to the enquiry and also intimated the petitioner with a request to produce valid community certificate from the Officer authorised. Questioning the said memo, the petitioner has filed a writ petition before this Court.

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4. Before the learned single Judge, the first respondent-Collector, Salem District, has filed a counter affidavit furnishing all the details and the conduct of the petitioner in not participating in the enquiry and the veracity of the community certificates issued by the Tahsildar (Debt Relief and Forest Settlement).

5. The learned single Judge, by an order dated 29.10.2001, after considering the claim of the petitioner and the stand taken by the respondents and also finding that the certificates were issued by the persons, who have no authority to issue the same, has rejected her claim and dismissed the writ petition, hence the present writ appeal.

6. The learned counsel appearing for the appellant vehemently contended that so long as the community certificates issued by the Tahsildars are not cancelled in the manner known to law, no further action need be taken either by the Collector or by her employer. She also very much relied on the decision of the Apex Court reported in Judgements Today 1997 (7) SC 660 (R.KANDASAMY VS. THE CHIEF ENGINEER, MADRAS PORT TRUST).

7. Before going into the merits of the claim made by the petitioner/appellant, it is relevant to note the decision of the Apex Court referred to by the learned counsel for the appellant, wherein Their Lordships have held that the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid Community Certificate for all purpose so long as such a certificate is not cancelled. They further held that the authorities cannot decline to take that into consideration and insist upon a fresh community certificate from the Revenue Divisional Officer.

8. It is useful to refer the particulars furnished by the Collector in his counter affidavit dated 23.04.1999. It is seen that the petitioner/appellant claims that she secured the community certificates from the Tahsildar, who is the competent authority on the date on which those certificates were issued. Even according to the learned counsel for the appellant, the first certificate was issued by the Special Tahsildar (Debt Relief), Salem, on 14.10.1989 and the second community certificate was issued by the Special Tahsildar (Forest Settlement), Attur, on 29.07.1993. It is not the case of the petitioner that the Special Tahsildar (Debt Relief) and Special Tahsildar (Forest Settlement) are Taluk Tahsildars. Though the learned counsel appearing for the appellant relied on the communication dated 05.08.1975 from the Government of India,

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Department of Personnel and Administrative Reforms to the Chief Secretaries, All State Governments, Union Territory Administration, on going through the same, we are of the view that the Special Tahsildar empowered to certain specialised work are not authorised/competent to issue community certificates. In this regard, it is useful to refer the specific information furnished by the Collector in para 4 of his counter affidavit, wherein it is stated that as per G.O.Ms.No.877, Adi Dravidar and Tribal Welfare, dated 06.06.1989, the community certificate relating to Scheduled Tribes for the purpose of appointment in the Central and the State Government including Public Sector undertaking, shall be issued only by the Revenue Divisional Officer. It is further stated that the petitioner/appellant obtained both the certificates from the same official viz.,T.V.Ayyadurai, Tahsildar, who is in the habit of issuing such type of false community certificates in the District of Salem. Now he is under suspension and a criminal case is also pending against him. There is no denial by the petitioner with regard to the above factual information furnished by the Collector by way of reply affidavit. There is no reason to disbelieve the said information. Accordingly, we hold that though the Taluk Tahsildars are competent authority at the relevant time i.e. on 06.06.1989, the Special Tahsildar (Forest Settlement) and Special Tahsildar (Debt Relief) cannot be equated to the rank of Taluk Tahsildar. In such circumstances and in view of the specific Government Order referred to in para 4 of the counter affidavit of the first respondent, we are unable to accede the stand of the learned counsel for the appellant and we also hold that the decision of the Supreme Court relied on by the learned counsel for the appellant is not helpful to her case.

9. Coming to the next aspect viz., the conduct of the petitioner in not associating herself with the enquiry being conducted by the Collector, it is not in dispute that she has received notice for enquiry from the office of the Collector. The particulars furnished, which are available in the counter affidavit, clearly show that the petitioner did not avail the said opportunity by placing acceptable material in support of her claim. When the employer doubts the genuineness of the community certificate, they are fully justified in calling for a report from the authority concerned. In the case on hand, based on the request made by her employer, viz., All India Radio, Government of India, Chennai, the Collector has directed the Revenue Divisional Officer, Salem, to conduct local enquiry . The records of the Revenue Divisional Officer, Salem, show that the petitioner viz., Chitra and her family members never resided in Ulipuram village and there is no "konda Kappua" people in the village. The report also shows that the community certificates issued to her that she belongs to "Konda Kappua" community were

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liable to be cancelled. The information further shows that in spite of specific direction, she did not appear before the District Collector. All these factual aspects were duly considered by the learned single Judge. As rightly pointed out by the learned single Judge, the petitioner has earned enormous time merely by remaining absent before the Collector on one hand and on assuring the Department viz., her employer, that she would furnish the community certificate from the Revenue Divisional Officer. Again as rightly observed by the learned single Judge, when the petitioner belongs to Scheduled Tribe, nothing prevented her in appearing before the Collector by placing acceptable evidence to substantiate her claim in order to safeguard her employment. As rightly pointed out, she did not accede to the notices issued by the Collector and ultimately she has not produced any certificate to satisfy her employer. It is not in dispute that if the certificate found to be suspicious, the same can be sent for verification. In the case on hand, the second respondent-her employer basing on the doubt or eligibility of the person, who issued a certificate, requested the Collector- the first respondent herein to verify her community status and submit a report. The course adopted by the second respondent and steps taken by the first respondent cannot be faulted with. On the other hand, we are in agreement with their action and the ultimate conclusion arrived at by the learned single Judge.

10. In the light of the above discussion, we do not find any merit or valid ground for interference. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, WAMP No.19295 of 2001/ 3405 of 2002 are also dismissed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Collector,
Salem District,
Salem.

2.The Station Director,
All India Radio,
Government of India,
Chennai-600 004.

+ one cc to Mr. P. Wilson, S.S.G. Sr no. 55132
+ one cc to the Government Pleader sr no. 55094

SR (CO)
NM(27.11.2006)

W.A.No.2537 of 2001

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